

Hon. Richard A. Jones, District Judge
Hon. J. Richard Creatura, Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Ian Simmers,

Plaintiff,

v.

King County, the City of Bothell, Det.
Edward J. Hopkins, Sgt. Clement
Rusk, Det. Rebecca Miner, Det. John
McSwain Det. Pat Raftus, Det. Ken
Baxter, Chief Mark Ericks, Det. Sgt.
David Schlaegel, Maj. Jackson Beard,
Unknown Officers of the City of
Bothell Police Department, and
Unknown Sheriff's Deputies of King
County,

Defendants.

Case No. 2:21 CV 100

**NOTICE OF ADDITIONAL
AUTHORITY**

Plaintiff Ian Simmers, through his undersigned attorneys, submits the following NOTICE of additional authority related to the pending motions for judgment on the pleadings submitted by Defendant King County (Dkt. 29); the City of Bothell Defendants (Dkt. 31); and individual King County Defendants (Dkt. 32), stating as follows:

On June 3, 2021, this Court heard oral argument on the pending motions. During the hearing, counsel for Plaintiff referenced two authorities not in the briefing.

1 First, counsel referred to a case he litigated where, after significant
 2 discovery, the question of whether the statute of limitations applied was one for
 3 the jury rather than the Court even at summary judgment. That case is
 4 *Richardson v. City of Chicago*, 314 F. Supp. 3d 999, 1014 (N.D. Ill. 2018) (“The
 5 Court concludes that a jury must be allowed to determine whether equitable
 6 tolling, equitable estoppel, or fraudulent concealment apply to save the claims
 7 from the running of the statute of limitations. For all of the claims, there are
 8 material factual disputes concerning whether Richardson knew or should have
 9 known that he could bring suit against the ASA Defendants; whether the ASA
 10 Defendants actively misled Richardson in a manner that prevented him from
 11 timely filing his claims; and whether, even if the ASA Defendants were
 12 blameless, Richardson was nonetheless prevented from asserting his rights in
 13 some extraordinary way. The evidence, viewed in the light most favorable to
 14 Richardson, is ‘sufficient to create a factual dispute concerning tolling of the
 15 statute of limitations, and thus prevents the Court from granting summary
 16 judgment.”).

17 Second, as it concerns the issue of a “final judgment” related to *Hanson*,
 18 Plaintiff’s counsel quoted from, *Matter of Marriage of Cardwell*, statement that
 19 a “trial court’s interlocutory order or ruling is subject to revision at any time
 20 before final judgment.” 5 Wn. App. 2d 1051, 2018 WL 5309510, at *5 n.5
 21 (unpublished); (citing *State v. Kinard*, 39 Wn. App. 871, 873 (1985), and *Alwood*
 22 *v. Aukeen Dist. Ct. Comm’r*, 94 Wn. App. 396, 400 & n.9 (1999)).

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 24 DATED: June 4, 2021

Respectfully submitted,

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 26 IAN SIMMERS

27 By: /s/ David B. Owens

1 David B. Owens, WSBA #53856
2 LOEVY & LOEVY
3 100 S. King Street, Suite 100
4 Seattle, WA 98104
5 Phone: 312-243-5900
6 Email: david@loevy.com

7 John Hazinski*
8 LOEVY & LOEVY
9 311 N. Aberdeen St., 3FL
10 Chicago, IL 60607
11 Email: hazinski@loevy.com
12 * *Admitted Pro Hac Vice*
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